

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) 8:23CR86
Plaintiff,)
)
v.) REPLY TO GOVERNMENT'S
()) RESPONSE
RICHARD WESLEY MARSHALL,)
Defendant.)

COMES NOW the defendant, by and through counsel, and replies to the Government's response and requests the Court to issue a Report and Recommendation granting his pending Motion to Dismiss (ECF# 283) based on the facts set forth therein and the Brief in Support filed therewith. In support counsel states as follows:

- (1) The defendant filed a Motion to Dismiss (ECF# 283) and supporting brief (ECF #284) on June 11, 2024.
- (2) The government's response was originally ordered due on June 25, 2024.
- (3) The government asked for and received an extension until on or before July 9, 2024 to file a response. (ECF #295)
- (4) The government has filed a response with no factual basis establishing a single conspiracy. (ECF# 308) Further, the response does not set forth any factual basis disputing defendants claims set forth in his Motion and Brief.
- (5) The defendant's argument in support of his Motion to Dismiss was predicated on at least 70 hours of review by defense counsel of the discovery provided by the government as of the filing of the Motion to Dismiss on June 11, 2024. This review reflected a dearth of evidence regarding defendant Marshall. The second superseding indictment alleges the defendants are involved in the

activities of an extensive marijuana distribution organization with the central hub of the activity in California as well as financial crimes related thereto.

(6) Discovery discloses a classic hub and spoke conspiracy without any connection between the spokes. Without more, each spoke is a separate conspiracy, a discreet agreement, with the hub. This hub extends across the United States to spokes located in other cities. Omaha, Nebraska, is one such spoke. The only information that counsel has seen regarding defendant Marshall's alleged involvement in a marijuana conspiracy, was described by the government in their motion to keep defendant Marshall detained. They allege, without any specificity, that he operated in Maryland. The response adds no additional factual basis.

(7) Accordingly, based on an exhaustive review of the Government's discovery provided and filings in this case, it is clear that Defendant Marshall did not participate in any conspiracy linked to the District of Nebraska.¹

(8) Counsel expected that any government response to this motion would point out the evidence of Marshall's participation in the charged conspiracy in this case, i.e., facts and not merely conclusory statements.

(9) As such the Court should adopt the facts set forth in the defendant's brief and issue a Report and Recommendation granting the Motion to Dismiss.

¹ Most recently the government filed a civil forfeiture action in docket 8:24CV160. The defendant is described therein, along with some but not all other defendants as being involved in money laundering according to an informant. The statements in that filing, while also strictly conclusory, do not allege any property or cash values related to Mr. Marshall specifically. The filing contains no details for the informant's conclusions, no corroboration of the informant's assertions, no information relative to where this alleged money laundering happened, and it does not substantively discuss marijuana distribution at all. In other words, counsel is still at a loss as to why defendant Marshall was included in this indictment.

(10) Further delay is highly prejudicial to Marshall. Marshall is only one of two defendants detained in this entire case. He has been in custody since the date of his arrest in the Central District of California on or about December 6, 2023. He has no prior record.

(11) Marshall was originally ordered released by the Magistrate after his Rule 5 detention hearing in Central District of California on December 15, 2023.

(12) His continued detention is a result of a Motion to Revoke Release filed by the government which was eventually granted by Judge Buescher. (ECF# 186)

(13) The defendant has been *detained for more than seven months* by Order of the Court of this district *on charges that are not properly filed in this district*.

WHEREFORE, for all the above reasons, respectfully requests the Court to issue a Report and Recommendation granting his pending Motion to Dismiss (ECF# 283) based on the facts set forth therein and the facts set forth in the Brief in Support filed therewith without further delay.

RICHARD MARSHALL, Defendant.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was filed via CM/ECF in the United States District Court for the District of Nebraska on the 12th day of July 2024 and the system sent notification of this filing to:

Thomas Kangior, AUSA

/s Jerry M. Hug